

Message Text

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ACTION OES-06

INFO OCT-01 NEA-10 ISO-00 HEW-04 AID-05 IO-13 CIAE-00

INR-07 NSAE-00 /046 W

----- 022825

R 171237Z AUG 76

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 7771

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

AMEMBASSY ISLAMABAD

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DEPT PASS TO OES/EP/PA: DHEW/PHS/OIH/NIH: AID

EO 11652: NA

TAGS: TBIO, SPOP, IN, PK

SUBJ: MAHARASHTRA COMPULSORY STERILIZATION BILL

REF: A. NEW DELHI 10993, B. NEW DELHI A-197, C. NEW DELHI A-141

BEGIN SUMMARY: THE MAHARASHTRA COMPULSORY STERILIZATION BILL HAS BEEN PASSED BY THE GOM LEGISLATIVE COUNCIL AND IS BEING REVIEWED BY THE CENTRAL GOVERNMENT BEFORE RECOMMENDING THE PRESIDENT'S ASSENT. THE PRESENT BILL HAS BEEN WATERED DOWN SOME FROM THE ORIGINAL DOCUMENT TO CONFORM MORE TO THE CENTRAL GOVERNMENT'S POLICIES. IF THE BILL IS CLEARED IT IS LIKELY TO SET THE TONE FOR OTHER STATE BILLS TO FOLLOW. END SUMMARY.

1. THE MAHARASHTRA FAMILY RESTRICTION OF SIZE BILL, (PREVIOUSLY COMPULSORY STERILIZATION BILL), PASSED BY THE MAHARASHTRA LEGISLATIVE COUNCIL ON JULY 26 (REFTEL A), HAS BEEN FORWARDED TO THE HOME MINISTRY IN DELHI FOR REVIEW. BECAUSE OF THE EXTREME IMPORTANCE OF THIS BILL, IT WILL REQUIRE THE PRESIDENT'S ASSENT. CONSEQUENTLY, LIMITED OFFICIAL USE

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IT WILL FIRST BE REVIEWED BY THE HOME MINISTRY, THE

MINISTRY OF HEALTH AND FAMILY PLANNING, AND THE CABINET
BEFORE IT IS RECOMMENDED TO THE PRESIDENT.

2. THE MAHARASHTRA LEGISLATURE ADOPTED THE REVISED BILL
WITH CERTAIN CHANGES AND MODIFICATIONS THAT WERE
RECOMMENDED BY THE JOINT SELECT COMMITTEE. THE PERTINENT
CHANGES AND MODIFICATIONS ARE AS FOLLOWS: (THE ORIGINAL
BILL WAS FORWARDED TO THE DEPARTMENT (REFTEL C).

A. WHILE THE INITIAL TEXT LEFT IT TO THE GOM TO
DECIDE THE PRESCRIBED NUMBER OF CHILDREN FOR AN "ELIGIBLE
PERSON" FOR COMPULSORY STERILIZATION, THE COMMITTEE
DEFINES AN "ELIGIBLE PERSON" AS THE ONE RESIDING IN
MAHARASHTRA WHO AT ANY TIME HAS THREE CHILDREN OR MORE
ON THE APPOINTED DATE AND WHO IS BELOW 55 YEARS OF AGE,
IF MALE, AND BELOW 45 YEARS, IF FEMALE. THE DEFINITION
ALSO INCLUDES A PERSON HAVING THREE CHILDREN OF THE SAME
SEX PLUS A FOURTH CHILD.

B. THE COMMITTEE RECOMMENDED TO ALLOW ONE ADDITIONAL
CHILD TO COUPLES HAVING THREE CHILDREN OF THE SAME SEX.
(MAHARASHTRA DEMOGRAPHERS ESTIMATE THAT THERE ONLY 20,000
COUPLES IN THIS CATEGORY.)

C. THE COMMITTEE RECOMMENDED THAT THE NAME OF THE
BILL BE CHANGED FROM THE "MAHARASHTRA COMPULSORY
STERILIZATION BILL" TO "MAHARASHTRA FAMILY RESTRICTION
OF SIZE BILL," SINCE THE GOM FAMILY PLANNING OBJECTIVE
IS TO REDUCE FAMILY SIZE THROUGH COMPULSORY STERILIZA-
TION.

D. THE COMMITTEE MAKES IT EXPLICIT THAT CHILDREN
BORN WITHIN OR OUTSIDE THE STATE, AS WELL AS THOSE GIVEN
IN ADOPTION, SHOULD BE TAKEN INTO ACCOUNT WHILE ASCERTAIN-
ING THE NUMBER OF CHILDREN.

E. THE ORIGINAL BILL PROVIDED MINIMUM IMPRISONMENT
OF SIX MONTHS FOR OFFENDERS UNLESS THE COURT RULES
OTHERWISE, OR A FINE OF RS500. THE COMMITTEE RECOMMENDED
THAT WHEN STERILIZATION OR ABORTION IS CARRIED OUT, THE
OFFENDER SHOULD BE RELEASED.

F. FINALLY, FINES SHOULD NOT BE MORE THAN RS.500
NOR LESS THAN RS.100.

G. THE COMMITTEE RECOMMENDED THE FOLLOWING EXEMPTIONS
FROM STERILIZATION:
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A. AN ELIGIBLE PERSON WHOSE LAST CHILD IS FIVE YEARS
OLD OR MORE (PROVIDED THE PERSON PROMISES TO RESTRICT
HIS FAMILY SIZE IRRESPECTIVE OF THE NUMBER OF WIVES AND
IN THE EVENT OF PREGNANCY, TERMINATES IT AND GETS STERILIZED).

B. AN ELIGIBLE PERSON WHOSE SPOUSE OR SPOUSES HAVE
DIED AND WHO HAS NOT REMARRIED.

C. A PERSON WHO IS INCAPABLE OF REPRODUCTION.

3. BEGIN COMMENT: MR. A. CHANDASHAKER, THE SPECIAL SECRETARY FOR FAMILY PLANNING, MINISTRY OF HEALTH AND FAMILY PLANNING, TOLD THE SCIENCE ATTACHE THAT THE MAHARASHTRA BILL WOULD BE REVIEWED VERY CAREFULLY BY THE MINISTRY OF HEALTH AND ALSO BY THE CABINET, SINCE IT WAS THE FIRST AND ONLY COMPULSORY STERILIZATION BILL PROPOSED BY A STATE AND IT MAY VERY WELL SET THE TONE FOR OTHER STATES TO FOLLOW. MR CHANDASHAKER INDICATED THAT THE MINISTRY OF HEALTH HAS SENT A TEAM TO MAHARASHTRA TO MAKE A SURVEY OF THE HEALTH INFRASTRUCTURE TO DETERMINE IF IT IS ADEQUATE TO BACK UP THE COMPULSORY STERILIZATION PROGRAM. CHANDASHAKER SAID THAT THE MINISTRY OF HEALTH HAS RECEIVED DRAFT STERILIZATION BILLS FROM PUNJAB, HARAYANA, AND UTTAR PRADESH, BUT THEY HAVE HELD THEM IN "COLD STORAGE" UNTIL THE MAHARASHTRA BILL IS CLEARED. HE SAID IT WAS DIFFICULT TO UNDERSTAND WHY THE UP WOULD SUBMIT A BILL, SINCE THE HEALTH INFRASTRUCTURE OF THAT STATE IS EXTREMELY POOR AND IT WOULD BE IMPOSSIBLE TO CARRY OUT AN EFFECTIVE COMPULSORY STERILIZATION PROGRAM. HOWEVER, PUNJAB, HARAYANA, GUJARAT, AND KARNATAKA ALL HAVE SUFFICIENT HEALTH INFRASTRUCTURES TO SUPPORT A PROGRAM OF THIS KIND. THE SPECIAL SECRETARY SAID THAT PROBABLY IT WOULD BE SEVERAL WEEKS BEFORE THE BILL IS REVIEWED AND CLEARED BY THE GOVERNMENT AND, CONSEQUENTLY, COULD NOT GO INTO EFFECT AUGUST 15 AS PROPOSED BY THE GOVERNMENT OF MAHARASHTRA. THERE IS STILL A GREAT DEAL OF OPPOSITION TO COMPULSORY STERILIZATION, PARTICULARLY AMONG THE MEDICAL PROFESSION AND HEALTH ADMINISTRATORS, AND EVEN IN THE PARLIAMENT. THEY FEEL THAT A FEW STATES HAVE THE INFRASTRUCTURE TO BACK UP A PROGRAM OF THIS SORT, BUT THE MAJORITY WILL NEVER REACH THIS POINT AND, CONSEQUENTLY, THE CENTRAL GOVERNMENT WOULD BE FOOLISH TO INTRODUCE A NATIONAL COMPULSORY STERILIZATION BILL.

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FURTHERMORE, IF SOME STATES HAVE A STERILIZATION LAW AND OTHERS DO NOT, THIS COULD LEAD TO ALL SORTS OF PROBLEMS FROM THE STANDPOINT OF DISCRIMINATION WHICH IS ALREADY AN EXPLOSIVE FACTOR WITH THE MOSLEMS AND CHRISTIANS. THIS COULD ALSO LEAD TO MIGRATION OF FAMILIES OR PARTS OF FAMILIES TO NEIGHBORING STATES THAT HAVE MORE LIBERAL FAMILY PLANNING POLICIES. IN ADDITION, THE PRIME MINISTER CONTINUES TO STRESS THAT PERSUASION, NOT COMPULSION OR COERCION MUST BE USED IN THE FAMILY PLANNING PROGRAM WHICH INDICATES THAT SHE IS NOT BY ANY MEANS SOLD ON COMPULSORY STERILIZATION. IT WILL BE INTERESTING TO WATCH THE DEVELOPMENTS ONCE THE MAHARASHTRA BILL IS CLEARED FOR ENFORCEMENT. END COMMENT.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: FAMILY PLANNING, PROVINCE, LEGISLATIVE BILLS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 AUG 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: vogelfj
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976NEWDE12090
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760315-0959
From: NEW DELHI
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760847/aaaabode.tel
Line Count: 169
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION OES
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 NEW DELHI 10993, 76 NEW DELHI A-197, 76 NEW DELHI A-141
Review Action: RELEASED, APPROVED
Review Authority: vogelfj
Review Comment: n/a
Review Content Flags:
Review Date: 09 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 JUN 2004 by buchant0>; APPROVED <06 OCT 2004 by vogelfj>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MAHARASHTRA COMPULSORY STERILIZATION BILL
TAGS: TBIO, SPOP, IN, PK
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006